

CLERK'S COPY.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 814.

CHARLES L. BAENDER, APPELLANT,

vs.

**FRANK BARNETT, AS SHERIFF OF ALAMEDA COUNTY,
CALIFORNIA.**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF CALIFORNIA.**

FILED NOVEMBER 15, 1900.

(27,971)

(27,971)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1920.

No. 614.

CHARLES L. BAENDER, APPELLANT,

vs.

FRANK BARNETT, AS SHERIFF OF ALAMEDA COUNTY,
CALIFORNIA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF CALIFORNIA.

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a In the Southern Division of the District Court of the United States for the Northern District of California, First Division.

No. 16951.

In the Matter of CHARLES L. BAENDER. On Habeas Corpus.

1 In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. (16951).

CHARLES L. BAENDER, Plaintiff & Petitioner,

vs.

FRANK BARNET, as Sheriff of Alameda County, California,
Defendant.

Præcipe Designating Parts of Record to be Included in Transcript of Appeal to the Supreme Court of the United States.

To the Clerk of the above-entitled court:

You are requested to take a transcript of record to be filed in the Supreme Court of the United States, pursuant to an appeal allowed in the above entitled cause and to include in such transcript or record the following and no other papers or exhibits, to wit: Complaint, demurrer, order sustaining demurrer and denying the petition of plaintiff for a writ of habeas corpus, opinion of Court, notice and petition for appeal to the Supreme Court of the United States, and order allowing the claim of appeal, assignment of errors.

Respectfully,

ALBERT E. CARTER,
FRED C. PETERSON,

Attorney for Plaintiff.

(Endorsed:) Filed Oct. 21, 1920. W. B. Maling, clerk, by C. W. Calbreath, deputy clerk.

2 In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. (16951).

CHARLES L. BAENDER, Plaintiff and Petitioner,

vs.

FRANK BARNET, as Sheriff of Alameda County, California,
Defendant.

Complaint and Petition of Plaintiff for a Writ of Habeas Corpus.

Now comes the above named plaintiff and petitioner into this Honorable Court, and for cause of action alleges:

I.

That he is a citizen of the United States of America, residing in the City of Oakland, County of Alameda, State of California;

II.

That on January 29, 1918, there was filed in the above entitled Court an indictment against him in two counts; that on November 18, 1918, the first of said counts was dismissed by said Court, and he plead "guilty" to the second count which charged, in substance, that plaintiff did, at a time and place mentioned, without lawful authority, have in his possession certain dies, described therein, in violation of section 169 C. C. U. S.; that plaintiff explained, in open court, that the dies were contained in some junk which he had purchased for use in his factory, and that he did not know at that time that said dies were in said junk; nor that the dies came into his possession; no evidence was presented to show the contrary, or to show any evil intent of plaintiff.

III.

That on November 27, 1918, the above Court made and entered a purported order and judgment on plaintiff's plea aforesaid, that plaintiff be imprisoned for the period of one year in the County Jail, County of Alameda, State of California, and that he pay a fine in the sum of Ten Dollars;

IV.

That Frank Barnett, defendant, is the elected, qualified and acting Sheriff of said County of Alameda, State of California, and is in immediate charge and control of said County Jail, and has the custody of all of the persons confined therein;

V.

That on May 10, 1920, plaintiff was delivered to said Frank Barnett, and confined by him, the said Barnett, in said County Jail in execution of said purported judgment of imprisonment;

VI.

That plaintiff has been ever since said 10th day of May, 1920, and now is being confined and restrained of his liberty in said County Jail by said Barnett in execution of said purported judgment of imprisonment; and that said County Jail is in and within the territorial jurisdiction of the above entitled Court;

VII.

That the clause of section 169 C. C. U. S., upon which the said second count was predicated, is the following: "whoever, without lawful authority, shall have in his possession any such die, shall be fined not more than five thousand dollars and imprisoned not more than ten years";

VIII.

That the Congress enacted this legislation without lawful authority; that it is contrary to the Constitution of the United States and the laws enacted thereunder; that the above entitled Court had no jurisdiction to make and enter the aforesaid purported order and judgment and that said purported order and judgment by which plaintiff is now being restrained of his liberty was made and entered by the above entitled Court without lawful authority; and without due process of law; and that said judgment is contrary to the Constitution and has no law or statute to support it;

IX.

That plaintiff is now being restrained of his liberty contrary to the Constitution of the United States and laws enacted thereunder, and without the due process of law guaranteed by the Fifth Amendment to the Constitution of the United States;

X.

That the matters complained of herein by plaintiff have not been adjudicated by any court of the United States, and that plaintiff has no other complaint pending in any court in the United States in which the matters set forth in the foregoing complaint, or any part thereof, are included.

Wherefore plaintiff prays this Honorable Court to issue a writ of Habeas Corpus directed to said Frank Barnett, Sheriff of said County of Alameda, State of California, commanding him to produce the body of petitioner at a certain time and place to be by this Honorable Court appointed, with the day and cause of his detention, to do, submit to and receive whatsoever this Honorable Court shall consider in that behalf.

Signed at Oakland, County of Alameda, State of California, this 20th day of September, 1920.

CHARLES L. BAENDER,
Plaintiff and Petitioner.

5 STATE OF CALIFORNIA,
County of Alameda, ss:

Charles L. Baender, being first duly sworn, deposes and says: That he is the Plaintiff and Petitioner named in the foregoing instrument;

that he has read and knows the contents thereof; that the same is true of his own knowledge except those matters stated upon information and belief, and as — those matters he believes them to be true.

CHARLES L. BAENDER,
Plaintiff and Petitioner.

Subscribed and sworn to before me this 20th of September, 1920.

LOVETT K. FRASER, [SEAL.]
*Notary Public in and for the County of
Alameda, State of California.*

(Endorsed:) Filed Sep. 21, 1920. W. B. Maling, clerk by T. L. Baldwin, deputy clerk.

6 In the Southern Division of the United States District Court
for the Northern District of California, First Division.

CHARLES L. BAENDER, Plaintiff and Petitioner.

VS.

FRANK BARNETT, as Sheriff of Alameda County, California,
Defendant.

*Demurrer to Complaint and Petition of Plaintiff for a Writ of Habeas
Corpus.*

Comes now defendant above named, by and through the United States Attorney for the Northern District of California, and demurs to the complaint and petition of plaintiff for a writ of habeas corpus on file herein, and for grounds of demurrer alleges:

I.

That the facts therein stated are insufficient to constitute a cause of action against defendant above named.

II.

That this Court has no jurisdiction over the matters therein set out.

III.

That said complaint and petition for writ of habeas corpus is uncertain in that it cannot be ascertained therefrom whether petitioner is being detained under and by virtue of a Federal warrant or judgment.

7 Wherefore, defendant prays that he be hence dismissed
with his costs.

FRANK M. SILVA,
*United States Attorney.
Attorney for Defendant.*

(Endorsed:) Filed Oct. 2, 1920. W. B. Maling, clerk, by Lyle S. Morris, deputy clerk.

8 In the Southern Division of the United States District Court
for the Northern District of California, First Division.

No. 10051.

In the Matter of C. L. BAENDER. On Habeas Corpus.

L. K. Fraser, Esq., and A. E. Carter, Esq., Attorneys for Petitioner.
Frank M. Silva, Esq., United States Attorney and W. H. Tully,
Esq., Assistant United States Attorney, Attorneys for Respondent.

(*Opinion and Order.*)

On Demurrer to Petition for a Writ of Habeas Corpus.

The petitioner having pleaded guilty to an indictment charging him with a violation of Section 169 of the Criminal Code was sentenced to serve one year in the Alameda County Jail. He now seeks discharge from such imprisonment on the ground that the portion of said Section under which he was sentenced is unconstitutional. The portion at which this attack is directed is as follows:

"Whoever, without lawful authority, shall have in his possession any such die, hub, or mold, or any part thereof," shall be punished as provided.

The hub, die or mold referred to is described in the section as a die, hub or mold in the likeness or similitude * * * of any die, hub, or mold designated for coining or making certain coins of the United States. The whole section is directed against

9 counterfeiting. Petitioner urges that Congress has no power to make the mere possession of dies, without lawful authority, a criminal offense. That such possession may be innocent, may be unwitting, and that the section does not give one charged therewith any opportunity to show that such possession was innocent, or even without his knowledge.

But where mere possession of anything is made an offense the law always intends, and has always been construed to intend a willing and conscious possession. Such is the possession denounced in the statute under consideration, such is the possession intended by the indictment, and such is the possession, the petitioner having pleaded guilty to the indictment, that he must be held to have had. Otherwise he was not guilty. He might have pleaded not guilty, and upon trial shown that he did not know the dies were in his possession. But upon a plea of guilty no such explanation was admissible. As said by the Circuit Court of Appeals in passing upon this very indictment, "Congress evidently intended that the unlawful possession of such dies should be sufficient evidence to warrant a conviction, unless the accused could explain the possession to the satisfaction of

"the jury." Baender vs. U. S., 260 Fed. 832. In the case of United States vs. Arjona, 120 U. S. 479, a similar provision was held constitutional, although not considered by the Court from the angle here presented. It is significant, however, that its general constitutionality was not questioned by the Supreme Court, or by the Court below which certified the questions upon which their opinions were opposed, but only its constitutionality as applied to "Foreign banks and corporations."

10 I believe the provision in question to be constitutional, and the demurrer to the petition is therefore sustained, and the petition itself denied.

October 7th, 1920.

M. T. DOOLING,
Judge.

(Endorsed:) Filed Oct. 7, 1920. W. S. Maling, clerk, by C. M. Taylor, deputy clerk.

11 In the Southern Division of the United States District Court for the Northern District of California, First Division.

CHARLES L. BAENDER, Plaintiff and Petitioner,

vs.

FRANK BARNET, as Sheriff of Alameda County, California,
Defendant.

Notice of Appeal and Petition for Appeal to the Supreme Court of the United States and Order Allowing Claim of Appeal.

The above named plaintiff, conceiving himself aggrieved by an order made and entered on the 7th day of October, 1920, in the above entitled cause, does hereby appeal from said order to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herewith, and prays that this appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 21st day of October, 1920.

ALBERT E. CARTER,
FRED C. PETERSON,
Attorney for Plaintiff and Petitioner.

The foregoing claim of appeal is allowed.

M. T. DOOLING,
United States District Judge.

Dated this 21 day of October, 1920.

(Endorsed:) Filed Oct. 21, 1920. W. B. Maling, clerk, by C. W. Calbreath, deputy clerk.

12 In the Southern Division of the United States District Court
for the Northern District of California, First Division

(No. 16951.)

CHARLES L. BAENDER, Plaintiff and Petitioner,

vs.

FRANK BARNETT, as Sheriff of Alameda County, California,
Defendant.

Assignment of Errors.

The plaintiff prays an appeal from the final order of this Court to the Supreme Court of the United States, and assigns for error:

1. That the Court erred in sustaining the demurrer to the complaint herein.

2. That the Court erred in denying the petition of plaintiff for a writ of habeas corpus.

ALBERT E. CARTER,
FRED C. PETERSON,
Attorney- for Plaintiff.

(Endorsed:) Filed Oct. 21, 1920. W. B. Maling, clerk, by C. W. Calbreath, deputy clerk.

13 *Certificate of Clerk U. S. District Court to Transcript
on Appeal.*

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 12 pages, numbered from 1 to 12, inclusive, contain a full, true, and correct transcript of certain records and proceedings, in the matter of Charles L. Baender, on Habeas Corpus, No. 16951, as the same now remains on file and of record in this office; said transcript having been prepared pursuant to and in accordance with Præcipe for transcript for Appeal, and the instructions of the Attorneys for Petitioner and Appellant herein.

I further certify that the cost for preparing and certifying the foregoing Transcript on Appeal is the sum of Four Dollars and Twenty Five Cents (\$4.25) and that the same has been paid to me by Appellant herein.

Annexed hereto is the original Citation on Appeal, issued herein (page 14).

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court, this 4th day of November, A. D., 1920.

[Seal of the U. S. District Court, Northern Dist. of California.]

WALTER B. MALING,
Clerk,

By C. M. TAYLOR,
Deputy Clerk.

14 UNITED STATES OF AMERICA, *ss.*

The President of the United States to Frank Barnett, as Sheriff of Alameda County, California, defendant, Greeting:

You are hereby cited and admonished to be and appear at a United States Supreme Court of to be holden at the City of Washington, in the District of Columbia, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California, Southern Division, wherein Charles L. Baender plaintiff and Petitioner is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable M. T. Dooling, United States District Judge for the Northern District of California, this 21st day of October, A. D. 1920.

M. T. DOOLING,
United States District Judge.

15 [Endorsed:] No. 16951. United States District Court for the Northern District of California. Charles L. Baender, Appellant, vs. Frank Barnett, etc., Appellee. Citation on Appeal. Filed Oct. 21, 1920. W. B. Maling, clerk, by C. M. Taylor, deputy clerk.

Receipt of copy this 21st day of October, 1920, is hereby admitted.

FRANK M. SILVA,
U. S. Attorney, Attorney for Appellee.

Endorsed on cover: File No. 27,971. N. California D. C. U. S. Term No. 614. Charles L. Baender, appellant, vs. Frank Barnett, as sheriff of Alameda county, California. Filed November 13th, 1920. File No. 27,971.

FILE COPY

Office Supreme Court, U. S.

FILED

NOV 13 1920

JAMES D. WAHER,
CLERK.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1920.

No. 614.

CHARLES L. BAENDER, APPELLANT,

VS.

FRANK BARNET, AS SHERIFF OF ALAMEDA COUNTY,
CALIFORNIA, RESPONDENT.

**PETITION TO HAVE CAUSE ADVANCED UPON THE
CALENDAR.**

*To the Honorable the Chief Justice and Associate Justices of
the Supreme Court of the United States and to the Court:*

The above-named appellant respectfully states that his appeal in the above matter is now pending in the Supreme Court of the United States; that he has been since May 10, 1920, and now is being imprisoned in execution of a purported judgment of the District Court of the United States for the Southern Division of the Northern District of California; that his present appeal is from a judgment and order of said district court denying his petition for a writ of *habeas*

corpus; that appellant based his petition for discharge under said writ on the contention that the judgment in execution of which appellant is now being restrained of his liberty is void, and that said district court had no jurisdiction over the subject-matter in that cause.

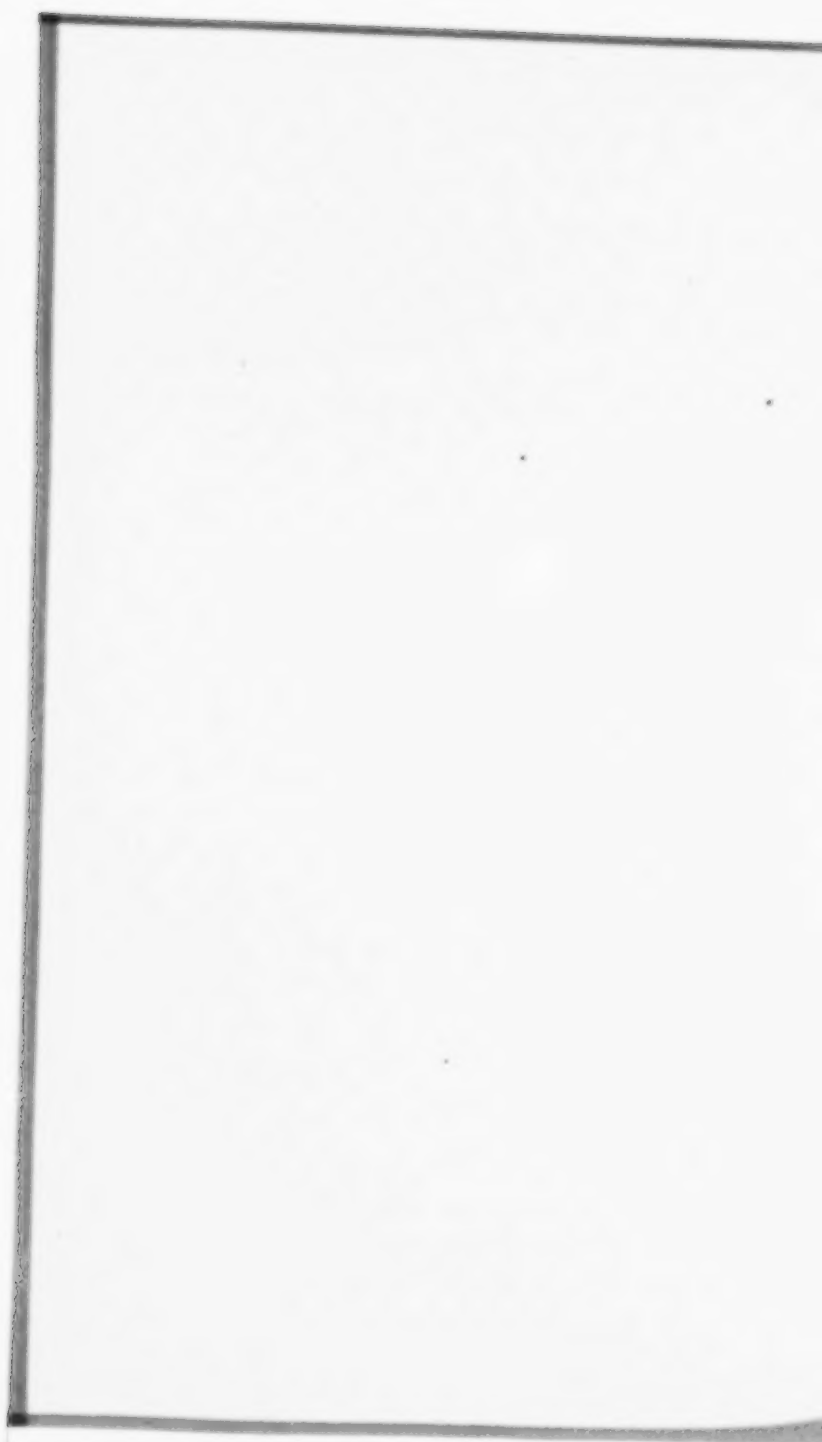
Appellant further respectfully states that he has been denied bail pending the final determination of the matters presented in his said appeal.

Wherefore appellant hereby respectfully petitions this Honorable Court to advance the hearing of the said appeal upon its calendar.

CHARLES L. BAENDER,
Appellant.

ALBERT E. CARTER,
Attorney for Appellant.

[Endorsed:] File No. 27,971. Supreme Court U. S. October Term, 1920. Term No. 614. Charles L. Baender, appellant, *vs.* Frank Barnett, as sheriff, etc. Motion to advance. Filed November 13, 1920.



FILE COPY

Office Supreme Court, U. S.

FILED

NOV 13 1920

JAMES D. BAKER,

CLERK.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1920.

No. 614.

CHARLES L. BAENDER, APPELLANT,

vs.

FRANK BARNET, AS SHERIFF OF ALAMEDA COUNTY,
CALIFORNIA, RESPONDENT.

PETITION TO BE ADMITTED TO BAIL PENDING THE
DETERMINATION OF THE APPEAL OF APPELLANT.

*To the Honorable the Chief Justice and Associate Justices of
the Supreme Court of the United States and to the Court:*

The above-named appellant respectfully states that his appeal in the above matter is now pending in the Supreme Court of the United States; that he has been since May 10, 1920, and now is being imprisoned in execution of a purported judgment of the District Court of the United States for the Southern Division of the Northern District of California; that his present appeal is from a judgment and order of said district court denying his petition for a writ of *habeas*

corpus; that appellant based his petition for discharge under said writ on the contention that the judgment in execution of which appellant is now being imprisoned is void, and that said district court had no jurisdiction over the subject-matter therein.

Appellant further respectfully states that he made application to said district court to admit appellant to bail pending his said appeal, and that said application was denied by said court; that appellant believes his contention is well founded upon the Constitution of the United States and the decisions of this Honorable Court, and that said appeal is not for the purpose of hindering or delaying any proceeding, and is not frivolous.

Wherefore appellant respectfully petitions this Honorable Court to fix a reasonable bail upon which appellant may be released pending the final determination of the matters in said appeal.

CHARLES L. BAENDER,
Appellant.

ALBERT E. CARTER,
Attorney for Appellant.

[Endorsed:] File No. 27,971. Supreme Court U. S. October Term, 1920. Term No. 614. Charles L. Baender, appellant, vs. Frank Barnett, as sheriff, etc. Motion to admit appellant to bail. Filed November 13, 1920.

